**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929**

**RCRev..No. 145 of 2007()**
**----------**
**AGAINST THE ORDER DT.29.9.06 IN RCA.29/2005 of RENT CONTROL APPELLATE AUTHORITY, ALAPPUZHA.**
**ORDER DT.3.10.05 IN RCP.5/2003 of RENT CONTROL COURT,ALAPPUZHA**
**.....**

**REVISION PETITIONER/DEFENDANT**
**----------**

**R.SOMANATHA RAO,S/O.RAMACHANDRA RAO,**
**AGED ABOUT RESIDING AT KARADITHEKKEBHAGOM MADOM,**
**AMBALAPUZHA, ALAPUZHA.**

**BY ADV. SMT.V.A.KASTHURI**

**RESPONDENTS: DEFENDANT**
**----------**

**N.SELVI W/O R.SUDHAKAR, AGED 42 YEARS,**
**RESIDING IN T.C.NO.17/2123 HOUSE NO.S.41U,**
**DR.PAI'S ROAD, POOJAPURA, THIRUVANANTHAPURAM.**

**BY ADV. SRI.DINESH R.SHENOY**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

---

R.C.R.No.145 OF 2007

---

Dated 11th June, 2007

**ORDER**

**Koshy,J.**

The respondent filed eviction petition before the Rent Control Court raising grounds under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. At that time, a preliminary objection was taken disputing the title of the landlord. That matter was considered as a preliminary issue. The Rent Control Authority found that there is no bonafide dispute of title. The respondent became the owner of the property by Ext.A5 sale deed dated 10.5.1982 and it was leased to the revision petitioner/tenant by Ext.A3 rent deed and in view of the above documents the title cannot be disputed by the tenant. That finding of the rent control authority was upheld by the appellate authority and hence this revision petition was filed. We are also told that a petition for injunction from committing waste was filed by the respondent against the revision petitioner and injunction was granted by the Additional Munsiff's Court which was confirmed by the Sub Court and the revision petitioner filed a second appeal as RSA.No.1054 of 2004 which was also dismissed. The appellate authority found in that case that respondent had title and

Exts.A1 and A2 are not sham as contended and, therefore, entitled to injunction. The finding is as follows:

> "As matter stands now the respondent is the owner of the plaint schedule property though she is not in actual physical possession of that property she is having dejura possession in her capacity as the owner of the property. The possession of the appellants over the plaint schedule property is only as per Ext.A2 rent deed in their capacity as tenants of the plaint schedule building. They had no manner of right to commit any waste in the plaint schedule property or cause any damage to the building let out to them."

In the second appeal, the contention was that the suit was not for declaration of title and, therefore, finding of the rent control court was illegal. This court held that what was held by the court below was that sale deed as well as the rent deed produced as Exts.A1 and A2 in that case (same as Exts.A3 and A5 in this case) are not sham documents and that was referred to only to show that revision petitioner got possession on the basis of the rent deed and, therefore, he cannot commit waste on the property. Injunction order was confirmed by that court also. If Exts.A3 and A5 marked in this case are valid documents, the revision petitioner cannot bonafide dispute the title in a rent control petition. Therefore, we see no ground to

interfere with the appellate order. We are not expressing any opinion regarding the merits of the grounds taken by the respondent in the eviction petition.

The revision petition is dismissed.

**J.B.KOSHY**
**JUDGE**

**K.P.BALACHANDRAN**
**JUDGE**

tks

ORDER ON I.A.NO.1140 OF 2007 IN R.C.R.NO.145 OF 2007

DISMISSED

11.6.2007 SD/- J.B.KOSHY, JUDGE.
SD/- K.P.BALACHANDRAN, JUDGE.

//TRUE COPY //

TKS